

DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES

POLICIES AND PROCEDURES

Subject:
**VERIFYING THE IDENTITY AND
AUTHORITY OF THE PERSON REQUESTING
DISCLOSURE OF PROTECTED HEALTH
INFORMATION**

Effective Date:
7/10/04

Policy Number:
HIPAA 04-10

Review Date:
6/5/07
Revision Date:
7/11/07

Entity Responsible:
Office of
Legal Counsel

1. **Purpose:**

This policy provides instruction and guidance on verifying the identity and authority of a person requesting use or disclosure of protected health information (PHI) under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Federal regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, other relevant Federal laws, and the Tennessee Code Annotated.

2. **Definitions:**

- 2.1 **Legal Representative:** The conservator of the service recipient; attorney in fact under a power of attorney who has the right to make disclosures under the power; parent, guardian or legal custodian of a minor child; guardian *ad litem* for the purposes of the litigation in which the guardian *ad litem* serves; treatment review committee for a service recipient who has been involuntarily committed; executor or administrator of an estate; temporary caregiver under Tenn. Code Ann. §34-6-302; or guardian as defined in the Uniform Veteran's Guardianship Law at Tenn. Code Ann. §34-5-102.
- 2.2 **Minor:** A person who is under eighteen (18) years of age or who is reasonably presumed to be under eighteen (18) years of age.
- 2.3 **Protected Health Information (PHI):** Individually identifiable health information [IIHI] which is information that is a subset of health information, including demographic information collected from an individual, and created or received by a health care provider; and relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or there is a reasonable basis to believe the information can be used to identify the individual; and that is transmitted or maintained in electronic media, or any other form or medium. Specifically excluded from this definition is IIHI contained in education records covered by the Family Educational Rights and Privacy Act (20 USC §1232g) and IIHI contained in employment records held by a covered entity in its role as employer. (45 CFR §160.103)

- 2.4 Service Recipient: A person who is receiving service, has applied for service, or for whom someone has applied for or proposed service because the person has a mental illness, serious emotional disturbance, or a developmental disability.

3. Policy:

- 3.1 Verify Identity and Authority of Person Requesting Disclosure of PHI; Documentation
- 3.1.1 Before disclosing any PHI, employees of the Department of Mental Health and Developmental Disabilities (DMHDD) and each Regional Mental Health Institute (RMHI) must verify the identity of any person requesting the disclosure of PHI, and the authority of that person to have access to the PHI, if the identity or authority of the person is not known to the employee; and
- 3.1.2 Obtain the necessary documentation from the person requesting disclosure of PHI when requests for disclosure of PHI are required to be in writing.

4. Procedure/Responsibility:

- 4.1 When request is received. When a DMHDD/RMHI employee receives a request for disclosure of PHI, the employee shall forward the request to the Privacy Officer/designee. If a verbal request is received, the employee must inform the individual that State law requires the request to be in writing. If the disclosure of PHI requires consent from the service recipient, or former service recipient, whose records are being requested, the employee shall either provide the person requesting the disclosure of PHI with a copy of the DMHDD's Authorization to Release Information form or direct the person to the DMHDD's website (http://www.state.tn.us/mental/legalCounsel/mhdd_lawforms.html) where the form can be obtained.
- 4.2 Verifying identity. The Privacy Officer/designee must verify the identity of the person requesting disclosure of PHI if the identity of the person is not known to the Privacy Officer/designee.
- 4.3 Acceptable methods of verifying identity. Acceptable methods of verifying identity for particular requestors include:
- 4.3.1 If requestor is a service recipient or former service recipient. If a service recipient, or former service recipient, makes an in-person request for disclosure of his or her PHI, the service recipient, or former service recipient, must show a driver's license or other valid picture identification, and provide his or her date of birth and social security number as acceptable verification of identity. If a service recipient, or former service recipient, makes a request for disclosure of his or her PHI by postal mail,

fax, or e-mail, the document received must meet all of the requirements of a valid authorization (see the DMHDD's Authorization to Release Information form for guidance). The service recipient, or former service recipient, may be contacted by telephone or letter and be asked to provide copies of his or her driver's license or other valid picture identification, and to provide documentation showing his or her date of birth and social security number as acceptable verification of identity.

- 4.3.2 If requestor is a parent, legal guardian, legal custodian, or legal representative of the service recipient or former service recipient. If a parent, legal guardian, legal custodian, or legal representative as defined in Section 2.1 of this Policy, makes an in-person request for disclosure of a service recipient's, or former service recipient's, PHI, the individual must show his or her driver's license or other valid picture identification, and/or appropriate court or other legal documents showing his or her relationship to the service recipient, or former service recipient, as acceptable verification of identity. If a parent, legal guardian, legal custodian, or legal representative makes a request for disclosure of a service recipient's, or former service recipient's, PHI by postal mail, fax or e-mail, the document received must meet all of the requirements of a valid authorization (see the DMHDD's Authorization to Release Information form for guidance). The parent, legal guardian, legal custodian, or legal representative may be contacted by telephone or letter and be asked to provide copies of his or her driver's license or other valid picture identification, and/or appropriate court or other legal documents showing his or her relationship to the service recipient, or former service recipient, as acceptable verification of identity.
- 4.3.3 If requestor is a public official. If a public official makes an in-person request for disclosure of a service recipient's, or former service recipient's, PHI, the individual must show his or her agency identification card, badge, or other proof of government employment as acceptable verification of identity. If a public official makes a request for disclosure of a service recipient's, or former service recipient's, PHI by postal mail, fax or e-mail, the written request must meet all of the requirements of a valid authorization (see the DMHDD's Authorization to Release Information form for guidance) and be on the appropriate government letterhead as acceptable verification of identity. If the disclosure of PHI requires consent of the service recipient, or former service recipient, whose records are being requested, the person requesting the disclosure of PHI shall be provided with a copy of the DMHDD's Authorization to Release Information form or be directed to the DMHDD's website (http://www.state.tn.us/mental/legalCounsel/mhdd_lawforms.html) where the form can be obtained.
- 4.3.4 If requestor is person acting on behalf of a public official. If a person acting on behalf of a public official makes an in-person request for

disclosure of a service recipient's, or former service recipient's, PHI, the individual must provide a written statement on government letterhead that the person is acting under the government's authority, or other documentation that establishes that the person is acting on behalf of the public official, as acceptable verification of identity. If a person acting on behalf of a public official makes a request for disclosure of a service recipient's, or former service recipient's, PHI by postal mail, fax or e-mail, the written request must meet all of the requirements of a valid authorization (see the DMHDD's Authorization to Release Information form for guidance) and be accompanied by a written statement on government letterhead that the person is acting under the government's authority, or other documentation that establishes that the person is acting on behalf of the public official, as acceptable verification of identity. If the disclosure of PHI requires consent of the service recipient, or former service recipient, whose records are being requested, the person requesting the disclosure of PHI shall be provided with a copy of the DMHDD's Authorization to Release Information form or be directed to the DMHDD's website (http://www.state.tn.us/mental/legalCounsel/mhdd_lawforms.html) where the form can be obtained.

- 4.3.5 If requestor is any person other than those identified above. If a person other than those identified above makes an in-person request for disclosure of a service recipient's, or former service recipient's, PHI, the individual must show a driver's license or other valid picture identification as acceptable verification of identity. If a person other than those identified above makes a request for disclosure of a service recipient's, or former service recipient's, PHI by postal mail, fax or e-mail, the written request must meet all of the requirements of a valid authorization (see the DMHDD's Authorization to Release Information form for guidance). The individual may be contacted by telephone or letter and be asked to provide copies of his or her driver's license, or other valid picture identification, and/or appropriate court or other legal documents showing his or her relationship to the service recipient, or former service recipient, as acceptable verification of identity. If the disclosure of PHI requires consent of the service recipient, or former service recipient, whose records are being requested, the person requesting the disclosure of PHI shall be provided with a copy of the DMHDD's Authorization to Release Information form or be directed to the DMHDD's website (http://www.state.tn.us/mental/legalCounsel/mhdd_lawforms.html) where the form can be obtained.

- 4.4 Verifying authority. In addition to verifying the identity of the person requesting disclosure of PHI, the Privacy Officer/designee must verify that the person has the authority to have access to the PHI.

- 4.5 Acceptable methods of verifying authority. Acceptable methods of verifying authority for particular requestors include:
- 4.5.1 If requestor is a parent, legal guardian, legal custodian, or legal representative of the service recipient or former service recipient. If the person requesting disclosure of PHI is the service recipient's, or former service recipient's, parent, legal guardian, legal custodian, or legal representative as defined in Section 2.1 of this Policy, the authority to receive PHI may be verified by: (1) requiring the parent to show a driver's license or other picture identification, and asking for the date of birth or social security number of the service recipient, or former service recipient; and (2) requiring the legal guardian, legal custodian, or legal representative to show appropriate court or other legal documents showing his or her relationship to the service recipient, or former service recipient, and verifying his or her authority to act on the service recipient's, or former service recipient's, behalf.
- 4.5.2 If requestor is a public official, a person acting on behalf of a public official, or a law enforcement official. If the person requesting disclosure of PHI is a public official, a person acting on behalf of a public official, or a law enforcement official, the authority to access PHI may be verified by viewing a court order or other sufficient legal process under which the request is made.
- 4.5.3 Subpoena alone insufficient. Under Tennessee law, a subpoena alone is not sufficient authority to release PHI. The Central Office Privacy Compliance Officer in the Office of Legal Counsel, or the RMHI attorney or Privacy Officer, must be consulted before PHI is disclosed when disclosure of PHI involves public officials, those acting on behalf of public officials, or law enforcement officials. The exceptions to these general rules are addressed in DMHDD HIPAA Policy 04-6, *Uses and Disclosures of Protected Health Information for Law Enforcement Purposes*.
- 4.5.4 If requestor is any person other than those identified above. If the person requesting disclosure of PHI is any person other than those identified above, the authority of the individual to access PHI must be verified in consultation with the Central Office Privacy Compliance Officer in the Office of Legal Counsel, or the RMHI attorney or Privacy Officer, by reviewing documentation provided by the person as verification of authority to access PHI. Examples of acceptable documentation include, but are not limited to, court orders or other sufficient legal documents.
- 4.6 If problems are encountered. The methods cited above to verify identity and authority are not all-inclusive. If problems are encountered, please contact the Central Office Compliance Privacy Officer in the Office of Legal Counsel or the

RMHI attorney or Privacy Officer.

- 4.7 Documentation. All disclosures of PHI must be recorded on a disclosure log kept in the service recipient's medical record. (See DMHDD's Policy HIPAA 04-8 *Accounting of Disclosures of Protected Health Information*) If a service recipient, or former service recipient, requests disclosure of PHI and presents a valid authorization, the employee handling the request must ensure the authorization form and any supporting documents are copied and filed in the service recipient's, or former service recipient's, medical record.

5. Other Considerations:

Authority:

Health Information Portability and Accountability Act of 1996 (HIPAA); HIPAA Regulations 45 CFR §160.103 and 45 CFR § 164.514(h)(1); Confidentiality of Alcohol and Drug Abuse Patient Records as regulated in 42 CFR Part 2; Tenn. Code Ann. §§ 33-1-303 and 33-3-104; Tenn. Code Ann. §§ 34-5-102 and 34-6-301 through 34-6-310; and DMHDD HIPAA Policies 04-6 and 04-8.

Approved:

Commissioner

Date